ALEC American Legislative Exchange Council

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MEMORANDUM

To: Communications and Technology Task Force Members

From: John Stephenson, Task Force Director

Re: 2013 States and Nation Policy Summit

This is the 35 Day Mailing for the 2013 States and Nation Policy Summit, which will take place **December 4-6** at the Grand Hyatt Washington in downtown **Washington, DC**. The early registration deadline is **November 6**, so please register now to take advantage of reduced rates. You may register and make hotel arrangements by clicking here.

As a reminder, the attached is not official ALEC model policy until it passes both the Communications and Technology Task Force and ALEC's National Board of Directors.

Enclosed you will find the following:

- Attendee/Spouse/Guest Registration Forms
- ALEC 2013 States and Nation Policy Summit Tentative Agenda
- Subcommittee Meeting Agendas
- A Task Force Meeting Tentative Agenda
- Draft Model Policies and Supporting Materials
- ALEC Mission Statement

Please review all of the enclosed documents carefully. We have a full agenda scheduled with consideration of model bills and presentations on timely topics relating to communications and technology. Therefore, attendance at all Task Force events is strongly encouraged.

If you have any questions about the meeting, please do not hesitate to contact me by telephone at 571-482-5046 or by e-mail at jstephenson@alec.org.

I look forward to seeing you in Washington, DC for what is sure to be an excellent meeting.

Sincerely,

John

2013 ALEC STATES & NATION POLICY SUMMIT

December 4 – 6, 2013

Grand Hyatt Washington
1000 H Street, NW • Washington, D.C. 20001

ALEC American Legislative Exchange Council
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ATTENDEE REGISTRATION / HOUSING FORM

Early registration deadline: November 6, 2013
Housing cut-off date: November 6, 2013

Online www.alec.org **Email** meetings@alec.org **Fax** 703.373.0932 **Phone / Questions** 571.482.5056 (Mon-Fri, 9am-5pm EST)

ATTENDEE INFORMATION

Prefix _____ First Name _____ Middle Initial _____ Last Name _____ Suffix(s) : _____
Badge Nickname: _____ Title _____
Organization *(required)* _____
Preferred Mailing Address: ☐ Business ☐ Home _____
City _____ State/Province _____ Country _____ ZIP/Postal code _____
Preferred Phone ☐ Work ☐ Home ☐ Mobile _____ Alternate phone ☐ Work ☐ Home ☐ Mobile _____ Fax _____
Email *(confirmation will be sent by email)* _____
On-site Emergency Information Name of Person to Contact: _____ Phone _____ Relationship to You: _____
Do you have any special physical, dietary (for example, vegetarian, kosher), or other needs: ☐ Yes ☐ No
If yes, please describe: _____
☐ This is my first time attending an ALEC event.

***Spouse / Guest:** If registering a spouse or guest, please complete the spouse/guest registration form. Spouse / guest registration is meant to accommodate legal spouses and immediate family members. Attendees from the same organization must register independently.

REGISTRATION INFORMATION

*** Please note that member fees are subject to verification*	*EARLY until Nov6*	*ON-SITE begin Nov 6*	*DAILY*
☐ ALEC Legislative Member	$375	$475	$300
☐ Legislator / Non-Member	$475	$575	$400
☐ ALEC Private Sector Member	$650	$750	$445
☐ Private Sector / Non-Member	$925	$1100	$545
☐ ALEC Non-Profit Member (501(c)(3) status required)	$525	$625	$400
☐ Non-Profit Non-Member (501(c)(3) status required)	$675	$825	$500
☐ Legislative Staff / Government	$375	$475	$300
☐ ALEC Alumni	$425	$525	$300
☐ ALEC Legacy Member	$0	$0	$0

For Daily Registration, select which day: ☐ Wed ☐ Thur ☐ Fri

METHOD OF REGISTRATION PAYMENT

Credit Card: Credit cards will be charged immediately.
☐ Amer Express ☐ Visa ☐ MasterCard
Card # _____
Cardholder *(please print)* _____
Exp Date *(mm/yy)* _____ Security Code_____
Signature _____

REGISTRATION FEES: $ _____

Note: Registration forms with enclosed payments must be received by November 6, 2013 to be eligible for early bird registration rates. Forms and/or payments received after November 6, 2013 will be subject to the on-site registration rate.

REGISTRATION CONFIRMATION INFORMATION

Online registrants will receive immediate email confirmation. If registering by form, confirmation will be emailed, faxed, or mailed within 72 hours of receipt of payment.

REGISTRATION CANCELLATION / REFUND INFORMATION

Registrations cancelled prior to 5pm EST November 6, 2013 are subject to a $100 cancellation fee. Registrations are non-refundable after 5pm EST November 6, 2013.

HOUSING — RESERVATION CUTOFF FOR ALEC DISCOUNTED RATE IS November 6, 2013

Grand Hyatt Washington **Arrival Date** _____ **Departure Date** _____

Sharing with: (Maximum 4 guests per room)
_____

Room Type		
□ Single	(1 person – 1 bed)	$289
□ Double	(2 persons – 1 bed)	$289
□ Double/ Double	(2 persons – 2 beds)	$289
□ Triple	(3 persons – 2 beds)	$314
□ Quad	(4 persons – 2 beds)	$314

Special requests
☐ ADA room required:
___ Audio ___ Visual ___ Mobile
☐ Rollaway / crib: _____
☐ Other: _____
_____

All rates DO NOT include state and local tax currently *14.5% (subject to change)*

Credit Card Information/ Reservation Guarantee

Credit Card information is required at time of reservation to guarantee the reservation. Card must be valid through December 2013

☐ Please use the same credit card information as above.
☐ Amer Express ☐ Visa ☐ MasterCard ☐ Discover
Card # _____
Cardholder *(please print)* _____
Exp Date *(mm/yy)* _____ Security Code_____
Signature _____

Note: Cutoff for reservations at the ALEC rate is November 6, 2013. After November 6, 2013, every effort will be made to accommodate new reservations, based on availability and rate. Room types and special requests are not guaranteed. The hotel will assign specific room types at check in, based upon availability.

HOUSING CONFIRMATION INFORMATION

Online reservations will receive immediate email confirmation. Reservations received by form will be confirmed via email, fax, or mail within 72 hours of receipt.

HOUSING CANCELLATION / REFUND INFORMATION

Credit cards will be charged one night room and tax in the event of a no show or if cancellation occurs within 72 hours prior to arrival. Early departure fee is one night's room and taxPlease obtain a cancellation number when your reservation is cancelled.

2013 ALEC STATES & NATION POLICY SUMMIT

December 4 – 6, 2013

Grand Hyatt Washington
1000 H Street, NW ● Washington, D.C. 20001

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SPOUSE/GUEST REGISTRATION FORM

Online www.alec.org | **Fax** (*credit cards only*) 703.373.0932 | **Phone / Questions** ● Mon-Fri, 9am-5:00 pm EST 571.482.5056

ATTENDEE INFORMATION IS REQUIRED TO REGISTER A SPOUSE OR GUEST

First Name _____ Last Name _____

Organization _____

Daytime phone _____

Email (*Confirmation will be sent by email*) _____

SPOUSE / GUEST REGISTRATION

SPOUSE / GUEST REGISTRATION GUIDELINES

1. Spouse / guest registration is meant to accommodate legal spouse and immediate family members.
2. Attendees from the same organization must register independently. No exception will be made.
3. Spouse / guest designation will be clearly visible on name badge.

Prefix _____ Last Name _____ First Name _____ Middle initial _____ Badge Nickname _____

Prefix _____ Last Name _____ First Name _____ Middle initial _____ Badge Nickname _____

Prefix _____ Last Name _____ First Name _____ Middle initial _____ Badge Nickname _____

SPOUSE / GUEST REGISTRATION FEES	***Number of Spouse/Guest(s)***	***Fee***	***TOTAL***
□ Spouse / Guest *please note name(s) above*	_____	$ 150	$ _____

METHOD OF SPOUSE / GUEST REGISTRATION PAYMENT

Credit Card: Credit cards will be charged immediately. Please fax to the above number for processing.

□ Amer Express
□ Visa
□ MasterCard

Card # _____

Cardholder (*please print*) _____

Exp Date (*mm/yy*) _____/_____ Signature _____

REGISTRATION CONFIRMATION INFORMATION

Online registrants will receive immediate email confirmation. If registering by form, confirmation will be emailed within 72 hours of receipt of payment.

REGISTRATION CANCELLATION / REFUND INFORMATION

Registrations cancelled prior to 5pm EST November 6, 2013 are subject to a $100 cancellation fee. Registrations are non-refundable after 5pm EST November 6, 2013.

Date & Time	Program
Tuesday, December 3	
9:00am - 5:00pm	Joint Board of Directors Meeting
1:00pm - 6:00pm	**Registration**
2:00pm - 6:00pm	Exhibitor Set Up
6:00pm - 9:00pm	Board of Directors Receptions and Dinner

Date & Time	Program
Wednesday, December 4	
7:00am - 6:00pm	**Registration**
7:00am - 9:00am	Exhibitor Set Up
7:30am - 11:30am	Subcommittee Meetings (Check with Task Force Director)
9:00 - 5:00pm	**ALEC Exhibition Hall Open**
9:00am - 11:00am	State Chairs Meeting
11:30am - 1:15pm	**Opening Luncheon (Speaker TBA)**
1:30pm - 2:45pm	Workshops (Topics TBA)
3:00pm - 4:15pm	Workshops (Topics TBA)
5:30pm - 6:30pm	**Jefferson Reception**

Date & Time	Program
Thursday, December 5	
7:00am - 7:00pm	**Registration**
8:00am - 9:15am	**Plenary Breakfast (Speakers TBA)**
9:30am - 5:00pm	ALEC Exhibition Hall Open
9:30am - 10:45am	Workshops (Topics TBA)
11:00am - 12:15pm	Workshops (Topics TBA)
12:30pm - 2:15pm	**Plenary Lunch (Speakers TBA)**
2:30pm - 5:30pm	Justice Performance Project
2:30pm - 5:30pm	Health and Human Services Task Force Meeting
2:30pm - 5:30pm	Tax and Fiscal Policy Task Force Meeting
2:30pm - 5:30pm	International Relations Task Force Meeting
6:00pm - 7:00pm	**Reception**

Date & Time	Program
Friday, December 6	
7:30am - 3:00pm	**Registration**
8:00am - 9:15am	**Plenary Breakfast (Speakers TBA)**
9:30am - 2:00pm	ALEC Exhibition Hall Open
9:30am - 10:45am	Workshops (Topics TBA)
11:00am - 12:15pm	Workshops (Topics TBA)
12:30pm - 2:15pm	**Plenary Lunch (Speakers TBA)**
2:30pm - 5:30pm	Civil Justice Task Force Meeting
2:30pm - 5:30pm	Commerce, Insurance and Economic Development Task Force Meeting
2:30pm - 5:30pm	Communications and Technology Task Force Meeting
2:30pm - 5:30pm	Education Task Force Meeting
2:30pm - 5:30pm	Energy, Environment, and Agriculture Task Force Meeting
2:00pm - 5:00pm	Exhibitor Load Out
6:00pm - 7:00pm	**Reception**
7:00pm-11:00pm	State Night (Contact Your State Chair)

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2013 STATES AND NATION POLICY SUMMIT
E-COMMERCE SUBCOMMITTEE
MEETING TENTATIVE AGENDA
Wednesday, December 4th

7:30am-8:00am – Subcommittee Meeting – Room TBD

- **Welcome and Introductions**
- **Presentation** – *"Bitcoin: Primer for Policymakers"*
- **Policy Discussion**
    - Fiduciary Access to Digital Assets Act
- **Adjourn**

ALEC American Legislative Exchange Council

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2013 STATES AND NATION POLICY SUMMIT
INNOVATION SUBCOMMITTEE
MEETING TENTATIVE AGENDA
Wednesday, December 4th

8:05am-8:35am – Subcommittee Meeting – Room TBD

- **Welcome and Introductions**

- **Presentation -** *"State University Public-Private Partnerships: how state universities help businesses deliver market-ready solutions"*

- **Adjourn**

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2013 STATES AND NATION POLICY SUMMIT
INFORMATION TECHNOLOGY SUBCOMMITTEE
MEETING TENTATIVE AGENDA
Wednesday, December 4th

8:40am-9:25am – Subcommittee Meeting – Room TBD

- **Welcome and Introductions**

- **Policy Discussion**

    - Resolution to Support the Work of the Telehealth Working Group on Interstate Compact
    - Draft Resolution Affirming the Digital Right to Repair
    - An Act Protecting Digital Equipment Owners and Small Businesses in Repairing Digital Electronic Equipment
    - Consumer Protection Through Disclosure of Digital Rights Model Act

2013 STATES AND NATION POLICY SUMMIT
CONSUMER PROTECTION, CRITICAL INFRASTRUCTURE, AND SECURITY TECHNOLOGIES SUBCOMMITTEE
MEETING TENTATIVE AGENDA
Wednesday, December 4th

9:30am-10:10am – Subcommittee Meeting – Room TBD

- **Welcome and Introductions**
- **Presentation — "***Critical Infrastructure: securing the nation's backbone"*
- **Policy Discussion**
    - Statement of Principles for Cybersecurity
- **Adjourn**

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2013 STATES AND NATION POLICY SUMMIT
BROADBAND SUBCOMMITTEE
MEETING TENTATIVE AGENDA
Wednesday, December 4th

10:15am-11:15am – Subcommittee Meeting – Room TBD

- **Welcome and Introductions**
- **Presentation** - *"Interconnection: Technology and Policy"*
- **Adjourn**

2013 STATES AND NATION POLICY SUMMIT
COMMUNICATIONS AND TECHNOLOGY TASK FORCE MEETING
FRIDAY, DECEMBER 6TH 2:30pm
TENTATIVE AGENDA

- Welcome
- Approval of the Minutes from the ALEC 40th Annual Meeting
- Subcommittee Reports and Director's Announcements

- **Keynote Presentation**

- **Spotlight on the States Panel: "Promoting Broadband, Protecting Privacy, and Growing E-Commerce in the States"**

- *Electronic Data Privacy Protection Act*
- *Statement of Principles for Cybersecurity*
- *Draft Resolution Affirming the Digital Right to Repair*
- *Consumer Protection Through Disclosure of Digital Rights Model Act*

- **21st Century Technology Issues Panel: "What State Policymakers Need to Know About Congress, Startups, Copyright, and Emerging Technologies"**

- *An Act Protecting Digital Equipment Owners and Small Businesses in Repairing Digital Electronic Equipment*
- *Model Fiduciary Access to Digital Assets Law*
- *Statement of Principles for the Electronic Communications Privacy Act*
- *Resolution Supporting the Efforts of the Telehealth Working Group*

- New Business
- Adjourn

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Summary: *The proliferation of Internet-connected and geolocation-enabled devices presents new challenges for state laws protecting personal information from unauthorized search. This model act aims to provide some clarity for the courts, law enforcement, and consumers by stating that a warrant or exception is required prior to search of mobile devices incident to arrest, and obtaining geolocation information. Also, the act requires courts to issue a report on the number of warrants requested and exceptions granted.*

Electronic Data Privacy Protection Act

SECTION 1. {Title} This Act may be cited as the Electronic Data Privacy Protection Act.

SECTION 2. {Purpose} The purpose of this Act is to clarify requirements for searches of electronic messages, mobile devices incident to arrest, and obtaining geolocation information.

SECTION 3. {Definitions}

(A) As used in this subchapter, unless the context otherwise indicates, the following terms have the following meanings.

1. **Adverse Result.** "Adverse Result" means:
    a. Immediate danger of death or serious physical injury;
    b. Flight from prosecution;
    c. Destruction of or tampering with evidence;
    d. Intimidation of a potential witness; or
    e. Substantially jeopardizes an investigation.
2. **Biometric Information System.** "Biometric Information System" means any tool, program, service, or system used to uniquely identify, verify identity of, and track individuals using retina and iris scans, fingerprints, voiceprints, hand and face geometry, gait patterns, or other automated systems.
3. **Electronic Communication Service.** "Electronic Communication Service" means a service that provides to Users the ability to send or receive wire or electronic communications as defined in 18 U.S.C. § 2510(15).
4. **Electronic Device.** "Electronic Device" means a device that contains data; or enables access to, or use of, an Electronic Communication Service, Remote Computing Service or Geolocation Information Service; or a radio-frequency identification chip or other transponder.
5. **Domestic Entity.** "Domestic Entity" has the meaning assigned by the state business organizations code.
6. **Government Entity.** "Government Entity" means a state or local department or agency.
7. **Geolocation Information.** "Geolocation Information" means any information that is not the content of an electronic communication as defined in 18 U.S.C. 2510, concerning the location of an Electronic Device that, in whole or in part, is generated by or derived from the operation or tracking of that device and that

could be used to determine or infer information regarding the location of the person, but does not include Internet Protocol addresses.

8. **Geolocation Information Service.** "Geolocation Information Service" means the provision of a global positioning service or other mapping, locational, or directional information service to the public, or to such class of users as to be effectively available to the public, by or through the operation of any wireless communication device, including any Electronic Device, global positioning system receiving device, or other similar or successor device.
9. **User.** "User" means any person or entity who—
    a. uses an Electronic Communication Service, Remote Computing Service, Geolocation Information Service, or an Electronic Device; and
    b. may or may not be the person or entity having legal title, claim or right to the Electronic Device or data stored on the Electronic Device.
10. **Remote Computing Service.** "Remote Computing Service" means, as defined in 18 U.S.C. § 2711(2), the provision to the public of computer storage or processing services by means of an electronic communications system, as defined in 18 U.S.C. § 2510(14).

SECTION 4. {Warrant required prior to search of Electronic Device obtained incident to arrest; warrant needed for acquisition of Geolocation Information}

(A) Except as provided in this subchapter or another provision of law, a Government Entity may not conduct a search of an Electronic Device without a valid search warrant issued by a duly authorized judge or justice using state warrant procedures.

(B) Except as provided in this subchapter or another provision of law, information contained or stored in an Electronic Device is not subject to a search by a Government Entity incident to a lawful custodial arrest without a valid search warrant issued by a duly authorized judge or justice using state warrant procedures.

(C) Except as provided in this subchapter or another provision of law, a Government Entity may not compel a User or Geolocation Information Service to provide a passkey, password, key code, to any Geolocation Information or Electronic Device without a valid search warrant issued by a duly authorized judge or justice using state warrant procedures.

(D) A Government Entity may not obtain Geolocation Information revealing the past, present or future location of an Electronic Device except:

1. With a valid search warrant issued by a duly authorized judge or justice using state warrant procedures;
2. With the consent of the person to whom the Geolocation Information pertains;
3. With the consent of a parent or legal guardian of a child or person adjudicated to be mentally incompetent to whom the Geolocation Information pertains;
4. In an emergency if the Geolocation Information is used respond to a request for assistance from the person to whom the information pertains, or to assist such person in circumstances when it is reasonable to believe that the life or safety of such person is threatened; or

5. To locate a stolen Electronic Device with the consent of the owner or operator of such device.

(E) Nothing in Sec. 4 (D)(2)-(5) shall be interpreted to affect the rights and responsibilities of providers of an Electronic Communication Service, Geolocation Information Service, Remote Computing Service, or a Government Entity conferred by 18 U.S.C. §§ 2702 or 47 U.S.C. § 222.

(F) Except as provided in another provision of law a Government Entity may not operate an Electronic Device to access data stored on an Electronic Communications Service or Remote Computing Service.

(G) Except as provided in this subchapter or another provision of law, a Government Entity may not track, monitor or observe an individual, or an individual's electronic communications, electronic habits or routines, or an individual's habits or routines in public, using Biometric Information Systems, or obtain any information regarding a Biometric Information System related to Users without a valid search warrant issued by a duly authorized judge or justice using state warrant procedures.

(H) A warrant issued under this subchapter may be served only on a service provider that is a Domestic Entity or a company or entity otherwise doing business in this state under a contract or terms of service agreement with a resident of this state, if any part of that contract or agreement is to be performed in this state, and the service provider shall produce all information sought regardless of where the information is held and within the period allowed for under the state's criminal code provisions for compliance with the warrant.

(I) A judge or justice may issue a wiretap warrant under this subchapter for the Geolocation Information of an Electronic Device pursuant to this section for a period of time necessary to achieve the objective of the authorization, but in no case may an initial wire tap warrant seek present or future Geolocation Information for a period longer than 10 days. A judge or justice may grant an extension of a wire tap warrant upon a finding of continuing probable cause and a finding that the extension is necessary to achieve the objective of the authorization. An extension may not exceed 10 days.

SECTION 5. {Notice}

(A) Notice must be given to the User whose Electronic Device was searched or whose Geolocation Information was obtained by a Government Entity.

(B) **Timing and content of notice.** Unless delayed notice is ordered under subsection C, the Government Entity shall provide notice to the User whose Electronic Device was searched or Geolocation Information was obtained by a Government Entity within three days of obtaining the Geolocation Information or conducting the search. The notice must be made by service or delivered by registered or first-class mail, e-mail or any other means reasonably calculated to be effective as specified by the court issuing the warrant. The notice must contain the following information:

1. The nature of the law enforcement inquiry, with reasonable specificity;
2. The Geolocation Information and information on the Electronic Deice of the User

that was supplied to or requested by the Government Entity and the date on which it was provided or requested;

3. If Geolocation Information was obtained from a provider of Geolocation Information Service or other third party, the identity of the provider of Geolocation Information Service or the third party from whom the information was obtained; and
4. Whether the notification was delayed pursuant to subsection C and, if so, the court that granted the delay and the reasons for granting the delay.

(C) **Delay of notification.** A Government Entity acting under section 4 may include in the application for a warrant a request for an order to delay the notification required under this section for a period not to exceed 90 days. The court shall issue the order if the court determines that there is reason to believe that notification may have an Adverse Result. Upon expiration of the period of delay granted under this subsection and any extension granted under subsection E, the Government Entity shall provide the User a copy of the warrant together with a notice pursuant to subsections A and B.

(D) **Preclusion of notice to User.** A Government Entity acting under section 4 may include in its application for a warrant a request for an order directing a provider of Geolocation Information Service to which a warrant is directed not to notify any other person of the existence of the warrant for a period of not more than 90 days. The court shall issue the order if the court determines that there is reason to believe that notification of the existence of the warrant may have an Adverse Result. Absent an order to delay notification or upon expiration of the period of delay, a provider of Geolocation Information Service to which a warrant is directed may provide notice to any other person.

(E) **Extension.** The court, upon application, may grant one or more extensions of orders granted under subsection C or D for up to an additional 90 days.

SECTION 6. {Exceptions}

(A) Nothing in this subchapter shall be interpreted to affect the rights and responsibilities of providers of an Electronic Communication Service, Geolocation Information Service, Remote Computing Service, or a Government Entity conferred by 18 U.S.C. §§ 2702 (a)-(c), 47 U.S.C. § 222, or a lawful exception to the warrant requirement.

(B) A provider of Geolocation Information Service, Electronic Communication Service, or Remote Computing Services may divulge Geolocation Information pertaining to a user of such service to a government entity, if the provider, in good faith, believes that an emergency involving danger of death or serious physical injury to any person requires disclosure without delay of Geolocation Information relating to the emergency so long as such disclosure is not in violation of 18 U.S.C. § 2702.

(C) No later than 48 hours after seeking disclosure of information pursuant to this subsection, the Government Entity seeking to conduct the search or obtain the Geolocation Information shall file with the appropriate court a written statement

setting forth the facts giving rise to the emergency and the facts as to why the information sought is believed to be important in addressing the emergency.

SECTION 7 {Reporting requirements}

(A) **Report by judge or justice.** No later than January 31st each year, the clerk of the court who issues or denies a warrant under Section 4 during the preceding calendar year must report on each warrant to the state's administrative office of the courts. The report must include, but is not limited to:

1. The fact that the warrant was applied for;
2. The identity of the Government Entity that made the application;
3. The offense specified in the warrant or warrant application;
4. The nature of the facilities from which, the place where or the technique by which Geolocation Information was to be obtained;
5. The number of Electronic Devices searched and about which Geolocation Information was to be obtained;
6. Whether the warrant was granted as applied for or was modified or denied; and
7. The period of disclosures authorized by the warrant, and the number and duration of any extensions of the warrant

(B) **Report by administrative office of the courts to Legislature.** In June of each year, beginning in 2014, the administrative office of the courts of the state shall submit to the Legislature a full and complete report concerning the number of applications for warrants authorizing or requiring searches or the disclosure of Geolocation Information pursuant to this subchapter, the number of times access to Geolocation Information was obtained pursuant to Section 6 during the preceding calendar year, the given reason for each exception under Section 6, and the identity of the Government Entity that requested the exception. The full and complete report must include a summary and analysis of the data required under this subsection, as well as a searchable, itemized, and accessible database populated with the complete data required under this subsection.

(C) **Report publicly accessible.** In June of each year, beginning in 2014, the report summary and database required under subsection B must be made publicly available on the judicial branch's publicly accessible website. The Administrative Office of the Courts may prescribe the form of the reports and databases under this section and shall make concentrated efforts to provide and maintain reports and databases available online to the general public in optimally usable forms or formats at no cost.

SECTION 8. {Conditions of use of information}

(A) **Use of data or Geolocation Information obtained in violation of this subchapter not admissible.** Except as proof of a violation of this subchapter, information obtained in violation of this subchapter is not admissible as evidence in a criminal, civil, administrative or other proceeding.

(B) **Conditions of use of data or Geolocation Information in proceeding.** Data or Geolocation Information obtained pursuant to this subchapter or evidence derived from that information may be received in evidence or otherwise disclosed in a trial,

hearing or other proceeding only if each party, before the trial, hearing or proceeding, has been furnished with a copy of the warrant and accompanying application under which the information was obtained pursuant to the state code of criminal procedure.

(C) **Exception.** The requirement under subsection B may be waived if a judge makes a finding that it was not possible to provide a party with the warrant and accompanying application prior to a trial, hearing or proceeding and that the party will not be prejudiced by the delay in receiving the information.

SECTION 9. {Action against a corporation}

(A) No cause of action shall lie in any court of this state against any provider of an Electronic Communications Service, Remote Computing Service, or Geolocation Information Service, or its officers, employees, agents or other specified persons for providing information, facilities or assistance in accordance with the terms of a warrant or exception under this subchapter or with a good faith reliance on

1. A court warrant or order, a grand jury subpoena, a legislative authorization, or a statutory authorization (including a request of a governmental entity); or
2. A good faith determination that such disclosure is permitted under this Act.

SECTION 10 {Evidentiary Admissibility}

(A) An original or certified copy of any data produced pursuant to a warrant or exception in accordance with this subsection shall be self-authenticating and admissible into evidence as provided in Fed. R. Evid. 902(11) and 803(6).

SECTION 11 {Reimbursement}

(A) **Payment**— Except as otherwise provided by law, a Government Entity obtaining data under this section shall pay to the person or entity assembling or providing such information a fee for reimbursement for costs as are reasonably necessary and which have been directly incurred in searching for, assembling, reproducing, or otherwise providing such information. Such reimbursable costs shall include any costs due to necessary disruption of normal operations of any electronic communication service or remote computing service in which such information may be stored.

(B) **Amount**— The amount of the fee provided by subsection (a) shall be as mutually agreed by the Government Entity and the person or entity providing the information, or, in the absence of agreement, shall be as determined by the court which issued the order for production of such information (or the court before which a criminal prosecution relating to such information would be brought, if no court order was issued for production of the information).

SECTION 11. {Limitations}

(A) The repeal or amendment by this act of any law, whether temporary or permanent or civil or criminal, does not affect pending actions, rights, duties, or liabilities founded thereon, or alter, discharge, release or extinguish any penalty, forfeiture, or liability incurred under the repealed or amended law, unless the repealed or amended provision shall so expressly provide. After the effective date of this act, all laws repealed or amended by this act must be taken and treated as remaining in full force and effect for the purpose of sustaining any pending or vested right, civil action, special proceeding, criminal prosecution, or appeal existing as of the effective date of this act, and for the enforcement of rights, duties, penalties, forfeitures, and liabilities as they stood under the repealed or amended laws.

SECTION 12. {Effective Date}

(A) This act takes effect upon approval by the Governor.

SECTION 13. {Severability Clause}

(A) Should any part of this Act be rendered or declared unconstitutional by a court of competent jurisdiction of the State, such invalidation of such part or portion of this Act should not invalidate the remaining portions thereof, and they shall remain in full force and effect.

SECTION 14. {Repealer Clause}

(A) The following laws are hereby repealed:

DRAFT STATEMENT OF PRINCIPLES FOR CYBERSECURITY

WHEREAS, it is the mission of the American Legislative Exchange Council (ALEC) to advance the principles of free markets, limited government and federalism; and

WHEREAS, effective cybersecurity is essential for the proper function of government and continued growth of the economy in cyberspace; and

WHEREAS, cyber challenges could pose an existential threat to the US economy, our national security apparatus and public health and safety;

THEREFORE, LET IT BE RESOLVED, that ALEC supports the following principles in formulating effective government policy regarding cybersecurity:

1. ***Effective cybersecurity measures reflect the global, borderless, and interconnected nature of cyberspace***

Cyberspace is a global and interconnected system of networks and users that spans geographic borders and traverses national jurisdictions. While recognizing government's important role to protect its citizens, the state and the U.S. governments should exercise leadership in encouraging the use of bottom-up, industry-led, and globally-accepted standards, best practices, and assurance programs to promote security and interoperability. We must also collaborate with trusted allies both to share information and to bolster defenses.

2. ***Effective cybersecurity measures are capable of responding and rapidly adapting to new technologies, consumer preferences, business models, and emerging threats***

Cyberspace is full of innovation and dynamism, with rapidly changing and evolving technologies. Cybersecurity measures must be equally dynamic and flexible to effectively leverage new technologies and business models, and changing consumer preferences, and address new, ever-changing threats.

3. ***Effective cybersecurity measures focus directly on threats and bad actors***

In cyberspace, as in the physical world, adversaries use instruments (in this case, technology and communications) to carry out crime, espionage, or warfare. Cybersecurity measures must enable governments to better use current laws, regulations, efforts, and information sharing practices to respond to cyber bad actors, threats, and incidents domestically and internationally.

4. ***Effective cybersecurity measures focus on awareness***

Cyberspace's owners include all who use it: consumers, businesses, governments, and infrastructure owners and operators. Cybersecurity measures must help these stakeholders to be aware of the risks to their assets, property, reputations, operations, and sometimes businesses, and better understand their important role in helping to address these risks. Industry should lead the way in sharing information with the appropriate government entities following an attack and collaborating with others in the private sector to share best practices.

5. ***Effective cybersecurity measures emphasize risk management***

Cybersecurity is not an end state. Rather, it is a means to achieve and ensure continued trust in various technologies and communications networks that comprise the cyber infrastructure. Cybersecurity measures must facilitate an organization's, whether it is the government or a private entity, ability to properly understand, assess, and take steps to manage ongoing risks in this environment.

6. ***Effective cybersecurity measures build upon public-private partnerships, existing initiatives, and resources***

Partnerships between government and industry has provided leadership, resources, innovation, and stewardship in every aspect of cybersecurity since the origin of the Internet. Cybersecurity efforts are most effective when leveraging and building upon these existing initiatives, investments, and partnerships.

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Consumer Protection through Disclosure of Digital Rights

Problem:

Consumers, including business, industry, and government are not consistently provided details of how digital equipment is to be supported prior to point of purchase. Lack of sufficient information creates the situation where the vendor (also known as the Original Equipment Manufacturer or "OEM") can introduce new requirements post-purchase which interfere with competition for post-purchase repair and limit or prevent asset resale. Lack of resale opportunities destroys the investment made by consumers and forces early retirement of useful assets at the timetable dictated by the OEM.

At the household level, consumers are estimated to already own 25 digitally driven devices, ranging from programmable thermostats to refrigerators to automobiles. The consumer is always at the mercy of the repair policies of the vendor, with no options save those the OEM permits. While repair may not yet be a burning issue for some products, the digital electronics industry trend is strongly towards monopolization of repair and resale with closed markets in agriculture, automobiles, aircraft, industrial controls, medical equipment, point of sale equipment, consumer electronics, cell phones, and "computers".

Disclosure of the following policies prior to purchase would allow consumers to make educated purchasing decisions, including the opportunity to negotiate more favorable terms and conditions, or to select products that can be more flexible supported and serviced.

The following are the minimum disclosure points that must be included to protect consumers:

A. What is the price breakdown of hardware elements from licensed elements?
B. What part of the purchase is transferrable in the secondary market?
C. How are service parts provided?
D. How is service documentation provided?
E. How are updates, patches & fixes, and other defect support provided to machine code?
F. How are diagnostic routines, including diagnostic tools, provided?
G. How are specialty repair tools provided?
H. How are remote diagnostics, if applicable, provided?

The above list is reflective of areas where OEMs are not consistently divulging their policies, which grants them, by default, the appearance of the right to command a repair and support monopoly for their products. If a vendor does not permit a buyer to access any of the above, it would be the informed choice of the buyer to make the purchase. However, without the ability to service and support equipment outside the OEM, the buyer should not expect to capitalize the asset as there is no ability to transfer the equipment.

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DRAFT RESOLUTION AFFIRMING THE DIGITAL RIGHT TO REPAIR

WHEREAS, it is the public policy of the State of [insert state name here] to promote the growth of the state's economy, and

WHEREAS, the economy now includes the sale and repair of millions of digital products every year, and

WHEREAS, sales of consumer electronics alone now generate than $200 billion in revenues for the global economy, and

WHEREAS, digital products include embedded "programming" on the chip or on the circuit board, and;

WHEREAS, a growing number of digital product manufacturers have taken to claiming that this machine-level code is "intellectual property" under the Copyright Act in order to prevent owners from controlling their purchases, and

WHEREAS, owners are being told that machines cannot be repaired because they contain intellectual property, that machines cannot be modified, and that machines cannot be resold because the intellectual property is not transferrable, and

WHEREAS, consumers are purchasing digital products unaware of these restrictions on their ability to repair and resell their purchases, and

WHEREAS, this practice has already been applied to thousands of different digital products ranging from consumer cell phones, to combine harvesters, to automobiles, to mainframe data center equipment, and to industrial controls, and

WHEREAS, consumers and their preferred repair professionals are increasingly being restricted from accessing diagnostic codes, product manuals, replacement parts, repair tools, and machine-level code critical to performing repairs and maintenance, and

WHEREAS, restricting access to any of the preceding elements makes repair either more difficult, illegal, or impossible;

WHEREAS, preventing modification, repair, and resale of digital products decreases the bottom line of the owner, and

WHEREAS, if the product cannot be repaired, most products with digital electronic parts have only scrap value and become e-waste;

WHEREAS, the key to supporting owner's rights to resell is to use their purchases as they see fit is to affirm that the embedded code that is delivered with the machine belongs to the machine, and

WHEREAS, hardware repair has no impact on licensed products, and

WHEREAS, license terms and conditions are external to the repair of equipment and users will still make their software license support arrangements separately, and

THEREFORE, LET IT BE RESOLVED, the State of [insert state name here] believes that unnecessarily interfering with the right to repair digital products is an affront to the principles of free markets and to private property rights, and

FURTHER, LET IT BE RESOLVED, the State of [insert state name here] calls for increased transparency and clarity on the part of digital products manufacturers in the terms and conditions of use, warranties, and license agreements for their products prior to purchase to assist consumers in making informed purchasing decisions, and

FURTHER, LET IT BE RESOLVED, the State of [insert state name here] calls upon the Congress of the United States to thoroughly investigate the issues concerning the right to repair and to take appropriate action through legislation if necessary.

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AN ACT PROTECTING DIGITAL EQUIPMENT OWNERS AND SMALL BUSINESSES IN REPAIRING DIGITAL ELECTRONIC EQUIPMENT

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 The General Laws are hereby amended by inserting after (Insert applicable statute) the following chapter:- CHAPTER (Insert Applicable statute)

Section (1) As used in this chapter, the following words shall, unless the context clearly indicates a different meaning, have the following meanings:

"Original Equipment Manufacturer ("OEM") ", any person or business who, in the ordinary course of its business, is engaged in the business of selling or leasing new digital electronic parts of machines to consumers or other end users pursuant to a (Insert Applicable Statutes) and is engaged in the diagnosis, service, maintenance or repair of digital electronic equipment to said parts or machines.

"Embedded Software", any programmable instructions provided on firmware with the machine or part delivered with the machine or part for the purposes of machine operation, including all relevant patches and fixes made by the manufacturer for this purpose, including, but not limited to synonyms "basic internal operating system", "internal operating system", "machine code", "assembly code", "root code", "microcode. "

"Authorized Repair Provider", an oral or written arrangement for a definite or indefinite period in which a manufacturer or distributor grants to a separate business organization or individual, as defined in (Insert statute____) license to use a trade name, service mark or related characteristic for the purposes of offering repair services under the name of the manufacturer. .

"Fair and Reasonable Terms". In determining whether a price is on "fair and reasonable terms," consideration may be given to relevant factors, including, but not limited to, the following:

(i)The net cost to the authorized repair organizations for similar information obtained from manufacturers, less any discounts, rebates, or other incentive programs.

(ii) The cost to the manufacturer for preparing and distributing the information, excluding any research and development costs incurred in designing and implementing, upgrading or altering the product. Amortized capital costs for the preparation and distribution of the information may be included.

(iii) The price charged by other manufacturers for similar information.

(iv) The price charged by manufacturers for similar information prior to the launch of manufacturer web sites.

(v) The ability of aftermarket technicians or shops to afford the information.

(vi) The means by which the information is distributed.

(vii) The extent to which the information is used, which includes the number of users, and frequency, duration, and volume of use.

(viii) Inflation.

“Data Security Feature”, any feature of an electronic device designed for the sole purpose of preventing the use of an electronic device in which it is installed from starting without the correct activation or authorization code.

“Documentation”, any manuals, diagrams, reporting output, or service code descriptions provided to the authorized repair provider for the purposes of effecting repair.

“Service Parts”, any replacement parts, either new or used, made available by the manufacturer to the authorized repair provider for the purposes of effecting repair.

“Independent Repair Provider", a person or business operating in the (insert State) that is not affiliated with a manufacturer or manufacturer’s authorized dealer of digital electronic equipment , which is engaged in the diagnosis, service, maintenance or repair of digital electronic equipment; provided, however, that, for the purposes of this chapter, a manufacturer shall be considered an independent repair provider for purposes of those instances when said dealer engages in the diagnosis, service, maintenance or repair of digital electronic equipment that are not affiliated with the manufacturer.

"Digital Electronic Equipment", a part or machine, originally manufactured for distribution and sale in the United States, excepting:

Insert exclusions

“Owner", a person or business who owns or leases a digital electronic product purchased or used in the State of (insert State).

“Remote Diagnostics, any remote data transfer function between a digital electronic machine and the provider of repair services including for purposes of remote diagnostics, settings controls, or location identification.

"Trade secret", anything, tangible or intangible or electronically stored or kept, which constitutes, represents, evidences or records intellectual property including secret or confidentially held designs, processes, procedures, formulas, inventions, or improvements, or secret or confidentially held scientific, technical, merchandising, production, financial, business

or management information, or anything within the definition of 18 U.S.C. § 1839(3) Section (2)(a)

Section (2): Except as provided in subsection (2)(e), for Manufacturers of digital electronic parts and machines, sold or used in the State of (insert state) shall make available for purchase by owners or independent repair facilities of products manufactured by such manufacturer and by the same diagnostic and repair information, including repair technical updates, updates and corrections to firmware, and related documentation in the same manner such manufacturer makes available to its authorized repair channel. Each manufacturer shall provide access to such manufacturer's diagnostic and repair information system for purchase by owners and independent repair facilities upon fair and reasonable terms.

(2)(b) Any manufacturer that sells any diagnostic, service, or repair information to any independent repair provider or other third party provider in a format that is standardized with other manufacturers, and on terms and conditions more favorable than the manner and the terms and conditions pursuant to which the dealer obtains the same diagnostic, service or repair information, shall be prohibited from requiring any dealer to continue purchasing diagnostic, service, or repair information in a proprietary format, unless such proprietary format includes diagnostic, service, repair or dealership operations information or functionality that is not available in such standardized format.

(2)(c)(i) Each manufacturer of digital electronic products sold or used in the State of shall make available for purchase by owners and independent repair facilities all diagnostic repair tools incorporating the same diagnostic, repair and remote communications capabilities that such manufacturer makes available to its own repair or engineering staff or any authorized repair channels. Each manufacturer shall offer such tools for sale to owners and to independent repair facilities upon fair and reasonable terms.

(2)(c)(iii) Each manufacturer that provides diagnostic repair information to aftermarket tool, diagnostics, or third party service information publications and systems shall have fully satisfied its obligations under this section and thereafter not be responsible for the content and functionality of aftermarket diagnostic tools or service information systems.

(2)(e) Manufacturers of digital electronic equipment or parts sold or used in the State of (Insert State)for the purpose of providing security-related functions may not exclude diagnostic, service and repair information necessary to reset a security-related electronic function from information provided to owners and independent repair facilities. If excluded under this paragraph, the information necessary to reset an immobilizer system or security-related electronic module shall be obtained by owners and independent repair facilities through the appropriate secure data release systems.

Section (3) Nothing in this chapter shall be construed to require a manufacturer to divulge a trade secret.

Section (4) Notwithstanding any general or special law or any rule or regulation to the contrary, no provision in this chapter shall be read, interpreted or construed to abrogate, interfere with, contradict or alter the terms of any provision of (Insert Applicable Statute)or the terms of any authorized repair provider executed and in force between an authorized repair provider and a manufacturer including, but not limited to, the performance or provision of warranty or recall repair work by an authorized repair provider on behalf of a manufacturer pursuant to such authorized repair agreement; provided, however, that any provision in such a authorized repair provider that purports to waive, avoid, restrict or limit a manufacturer's compliance with this chapter shall be void and unenforceable.

Section (5) Nothing in this chapter shall be construed to require manufacturers or authorized repair providers to provide an owner or independent repair provider access to non-diagnostic and repair information provided by a manufacturer to an authorized repair provider pursuant to the terms of an authorizing agreement.

Section (6)(a) In addition to any other remedies that may be available under law, a violation of this chapter shall be deemed to be an unfair method of competition and an unfair or deceptive act or practice in the conduct of trade or commerce in violation of (Insert Applicable Statute).

Section (6)(b) An independent repair provider or owner who believes that a manufacturer has failed to provide information, including documentation, updates to firmware, safety and security corrections, diagnostics, documentation, or a tool required by this chapter must notify the manufacturer in writing through the (Insert Appropriate Entity) and give the manufacturer thirty (30) days from the time the manufacturer receives the complaint to cure the failure. If the manufacturer cures said complaint within the cure period, damages shall be limited to actual damages in any subsequent (insert Applicable statute) litigation.

Section (6)(c) If the manufacturer fails to respond to the notice provided pursuant to (6)(b), or if an independent repair facility or owner is not satisfied with the manufacturer's cure, the independent repair facility or owner may file a complaint in the superior court, or if applicable in the federal district court for the district of (Insert State). Such complaint shall include, but not be limited to the following:

> (i) written information confirming that the complainant has attempted to acquire and use, through the then available standard support function provided by the OEM all relevant diagnostics, tools, service parts, documentation, and updates to embedded software , including communication with customer assistance via the manufacturer's then standard process, if made available by such manufacturer;
>
> (ii) written information confirming that the complainant has obtained and utilized the relevant manufacturer's diagnostic tool necessary for such repair; and
>
> (iii) evidence of manufacturer notification as set out in (6)(b).

Section (6)(d) Except in the instance of a dispute arising between an original equipment manufacturer and its authorized repair provider related to either party's compliance with an existing authorized repair agreement, which is required to be resolved pursuant to (Insert Applicable Statute) , an authorized repair provider shall have all the rights and remedies provided in this chapter, including, but not limited to, in the instance when exercising rights and remedies as allowed as an independent repair facility under (insert applicable statute).

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CONSUMER PROTECTION THROUGH DISCLOSURE OF DIGITAL RIGHTS

An Act Protecting Consumers and Business by requiring pre-purchase disclosure of terms and conditions for digital parts and machines.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1. The General Laws are hereby amended by inserting after (insert applicable statute), the following Chapter (number chapter):

Section (1) As used in this chapter, the following words shall, unless the context clearly contains a different meaning, have the following meanings:

"Consumer", the buyer of any electronic device or machine, including both individual and corporate buyers.

"Digital Electronic Device", any part or machine manufactured using digital electronic parts.

"Machine Code", any embedded or essential operational code provided with the machine or part.

"Original Equipment Manufacturer ("OEM")", the manufacturer of the digital part of machine and any of its authorized distribution channels including business partners, distributors, retail and internet sales channels.

"Trade Secret", or anything within the definition of 18 U.S.C. § 1839(3) Section (2)(a)

Section (2) any OEM offering equipment for sale or use in the State of (Insert State), shall provide written details of how each of the policies set forth in Section 3 will apply to purchases or legal transfers of their products. In all cases, policy disclosures shall be available to any prospective buyer at least one week prior to purchase, or as set forth below:

2.a. OEMs may publically post policies on the OEM controlled website, provided that the policies are available without any login or password requirement on the part of the prospective buyer.

2. b. OEMs may provide downloadable or printed materials at the retail point of purchase, provided such materials are clearly and visibly available to any prospective buyer without the assistance of a login, password, or local representative.

2. c. All such policies must be clearly dated as to effective date. Policy changes must be clearly noted and may be not applied retroactively, without the written consent of the buyer. Should the buyer refuse to agree to a policy change, the policy in force at the time of the purchase shall control.

Section (3) All OEMs shall disclose their official policy to prospective buyers on all of the following points according to the requirements listed in Section 2. The method, process, timeframe and pricing by which a buyer will access the library of support and repair documentation, including schematic diagrams and diagnostic repair codes; order service parts; access or order machine code patches, fixes, and updates; order, access, and use diagnostic software tools, including remote diagnostics and error codes; order repair tools, including software tools.

Section (4) All OEMS shall disclose to any prospective buyer, at least one week prior to the purchase, the breakdown of pricing for hardware elements and software license elements for each product offered for purchase. Hardware elements shall be treated as depreciable tangible assets and be fully transferrable between parties. Software licenses shall be separate and specifically provided at least one week prior to purchase for the evaluation and negotiation of the terms and conditions.

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(BACKGROUND MATERIAL—NOT TO BE CONSIDERED)

AN ACT PROTECTING MOTOR VEHICLES AND SMALL BUSINESSES IN REPAIRING MOTOR VEHICLES

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority
of the same, as follows:

1 The General Laws are hereby amended by inserting after chapter 93I the following chapter:-
CHAPTER 93J

Section (1) As used in this chapter, the following words shall, unless the context clearly indicates a different meaning, have the following meanings:

"Dealer", any person or business who, in the ordinary course of its business, is engaged in the business of selling or leasing new motor vehicles to consumers or other end users pursuant to a franchise agreement and who has obtained a class 1 license pursuant to the provisions of section 58 and 59 of chapter 140 and is engaged in the diagnosis, service, maintenance or repair of motor vehicles or motor vehicle engines pursuant to said franchise agreement.

"Franchise agreement", an oral or written arrangement for a definite or indefinite period in which a manufacturer or distributor grants to a motor vehicle dealer a license to use a trade name, service mark or related characteristic and in which there is a community of interest in the marketing of new motor vehicles or services related thereto at wholesale, retail, leasing or otherwise.

"Fair and Reasonable Terms". In determining whether a price is on "fair and reasonable terms," consideration may be given to relevant factors, including, but not limited to, the following:

(i) The net cost to the manufacturer franchised dealerships for similar information obtained from manufacturers, less any discounts, rebates, or other incentive programs.
(ii) The cost to the manufacturer for preparing and distributing the information, excluding any research and development costs incurred in designing and implementing, upgrading or altering the onboard computer and its software or any other vehicle part or component. Amortized capital costs for the preparation and distribution of the information may be included.
(iii) The price charged by other manufacturers for similar information.
(iv) The price charged by manufacturers for similar information prior to the launch of manufacturer web sites.
(v) The ability of aftermarket technicians or shops to afford the information.
(vi) The means by which the information is distributed.
(vii) The extent to which the information is used, which includes the number of users, and frequency, duration, and volume of use.
(viii) Inflation.

"Immobilizer system", an electronic device designed for the sole purpose of preventing the theft of a motor vehicle by preventing the motor vehicle in which it is installed from starting without the correct activation or authorization code.

“Independent repair facility", a person or business operating in the commonwealth that is not affiliated with a manufacturer or manufacturer’s authorized dealer of motor vehicles, which is engaged in the diagnosis, service, maintenance or repair of motor vehicles or motor vehicle engines; provided, however, that, for the purposes of this chapter, a dealer, notwithstanding its affiliation with any manufacturer, shall be considered an independent repair facility for purposes of those instances when said dealer engages in the diagnosis, service, maintenance or repair of motor vehicles or motor vehicle engines that are not affiliated with the dealer’s franchise manufacturer.

"Manufacturer", any person or business engaged in the business of manufacturing or assembling new motor vehicles.

"Motor vehicle", a vehicle, originally manufactured for distribution and sale in the United States, driven or drawn by mechanical power and manufactured primarily for use on public streets, roads and highways, but excluding:

(i) a vehicle that may be operated only on a rail line;
(ii) a recreational vehicle or auto home equipped for habitation;
(iii) an ambulance;
(iv) (iv) a bus, motorcoach or trackless trolley designed for the carriage of persons for hire or for school-related purposes;
(v) (v) vehicles used exclusively for the building, repair and maintenance of highways or designed primarily for use elsewhere than on the traveled part of ways;
(vi) (vi) any vehicle with a gross vehicle weight rating of more than 10,000 pounds;
(vii) (vii) any vehicle excluded from the definition of “motor vehicle” in chapter 90; and
(viii) (viii) a motorcycle, as defined in section 1 of chapter 90.

“Owner", a person or business who owns or leases a motor vehicle registered in the commonwealth.

"Trade secret", anything, tangible or intangible or electronically stored or kept, which constitutes, represents, evidences or records intellectual property including secret or confidentially held designs, processes, procedures, formulas, inventions, or improvements, or secret or confidentially held scientific, technical, merchandising, production, financial, business or management information, or anything within the definition of 18 U.S.C. § 1839(3) Section (2)(a)

Except as provided in subsection (2)(e), for Model Year 2002 motor vehicles and

thereafter, a manufacturer of motor vehicles sold in the commonwealth shall make available for purchase by owners of motor vehicles manufactured by such manufacturer and by independent repair facilities the same diagnostic and repair information, including repair technical updates, that such manufacturer makes available to its dealers through the manufacturer's internet-based diagnostic and repair information system or other electronically accessible manufacturer's repair information system. All content in any such manufacturer's repair information system shall be made available to owners and to independent repair facilities in the same form and manner and to the same extent as is made available to dealers utilizing such diagnostic and repair information system. Each manufacturer shall provide access to such manufacturer's diagnostic and repair information system for purchase by owners and independent repair facilities on a daily, monthly and yearly subscription basis and upon fair and reasonable terms. (2)(b) Any manufacturer that sells any diagnostic, service, or repair information to any independent repair facility or other third party provider in a format that is standardized with other manufacturers, and on terms and conditions more favorable than the manner and the terms and conditions pursuant to which the dealer obtains the same diagnostic, service or repair information, shall be prohibited from requiring any dealer to continue purchasing diagnostic, service, or repair information in a proprietary format, unless such proprietary format includes diagnostic, service, repair or dealership operations information or functionality that is not available in such standardized format.

(2)(c)(i) For Model Year 2002 motor vehicles and thereafter, efach manufacturer of motor vehicles sold in the commonwealth shall make available for purchase by owners and independent repair facilities all diagnostic repair tools incorporating the same diagnostic, repair and wireless capabilities that such manufacturer makes available to its dealers. Such tools shall incorporate the same functional repair capabilities that such manufacturer makes available to dealers. Each manufacturer shall offer such tools for sale to owners and to independent repair facilities upon fair and reasonable terms.

(2)(c)(ii) Any diagnostic tool or information necessary to diagnose, service or repair a motor vehicle that a manufacturer sells to any independent repair facility in a manner and on terms and conditions more favorable than the manner and the terms and conditions pursuant to which the dealer obtains the same diagnostic tool or information necessary to diagnose, service or repair a motor vehicle, shall also be offered to the dealer in the same manner and on the same terms and conditions as provided to such independent repair facility.

Any manufacturer that sells to any independent repair facility any diagnostic tool necessary to diagnose, service or repair a motor vehicle and such diagnostic tool communicates with the vehicle using the same non-proprietary interface used by other manufacturers, the manufacturer delivering such a diagnostic tool shall be prohibited from requiring any dealer from continuing to purchase that manufacturer's proprietary tool and interface unless such proprietary interface has a capability not available in the non-proprietary interface.

(2)(c)(iii) Each manufacturer shall provide diagnostic repair information to each aftermarket scan tool company and each third party service information provider with whom the manufacturer has

appropriate licensing, contractual or confidentiality agreements for the sole purpose of building aftermarket diagnostic tools and third party service information publications and systems. Once a manufacturer makes such information available pursuant to this section, the manufacturer will have fully satisfied its obligations under this section and thereafter not be responsible for the content and functionality of aftermarket diagnostic tools or service information systems.

(2)(d)(i) Commencing in Model Year 2018, except as provided in subsection (2)(e), manufacturers of motor vehicles sold in the commonwealth shall provide access to their onboard diagnostic and repair information system, as required under this section, using an off-the-shelf personal computer with sufficient memory, processor speed, connectivity and other capabilities as specified by the vehicle manufacturer and: (i) a non-proprietary vehicle interface device that complies with the Society of Automotive Engineers SAE J2534, the International Standards Organizations ISO 22900 or any successor to SAE J2534 or ISO 22900 as may be accepted or published by the Society of Automotive Engineers or the International Standards Organizations; or, (ii) an on-board diagnostic and repair information system integrated and entirely self-contained within the vehicle including, but not limited to, service information systems integrated into an onboard display, or (iii) a system that provides direct access to on-board diagnostic and repair information through a non-proprietary vehicle interface such as Ethernet, Universal Serial Bus or Digital Versatile Disc. Each manufacturer shall provide access to the same on-board diagnostic and repair information available to their dealers, including technical updates to such on-board systems, through such non-proprietary interfaces as referenced in this paragraph. Nothing in this Chapter shall be construed to require a dealer to use the non-proprietary vehicle interface (i.e., SAE J2534 or ISO 22900 vehicle interface device) specified in this subsection, nor shall this Chapter be construed to prohibit a manufacturer from developing a proprietary vehicle diagnostic and reprogramming device, provided that (i) the manufacturer also complies with Section 2(d)(i), and (ii) the manufacturer also makes this device available to independent repair facilities upon fair and reasonable terms, and otherwise complies with Section 2(a).

(2)(d)(ii) No manufacturer shall be prohibited from making proprietary tools available to dealers if such tools are for a specific specialized diagnostic or repair procedure developed for the sole purpose of a customer service campaign meeting the requirements set out in 49 CFR 579.5, or performance of a specific technical service bulletin or recall after the vehicle was produced, and where original vehicle design was not originally intended for direct interface through the non-proprietary interface set out in (2)(d)(i). Provision of such proprietary tools under this paragraph shall not constitute a violation of this chapter even if such tools provide functions not available through the interface set forth in (2)(d)(i), provided such proprietary tools are also available to the aftermarket upon fair and reasonable terms. Nothing in this subsection (2)(d)(ii) authorizes manufacturers to exclusively develop proprietary tools, without a non-proprietary equivalent as set forth in (2)(d)(i), for diagnostic or repair procedures that fall outside the provisions of (2)(d)(ii) or to otherwise operate in a manner inconsistent with the requirements of (2)(d)(i).

(2)(e) Manufacturers of motor vehicles sold in the commonwealth may exclude diagnostic, service and repair information necessary to reset an immobilizer system or security-related electronic modules from information provided to owners and independent repair facilities. If

excluded under this paragraph, the information necessary to reset an immobilizer system or security-related electronic modules shall be obtained by owners and independent repair facilities through the secure data release model system as currently used by the National Automotive Service Task Force or other known, reliable and accepted systems.

(2)(f) With the exception of telematics diagnostic and repair information that is provided to dealers, necessary to diagnose and repair a customer's vehicle, and not otherwise available to an independent repair facility via the tools specified in 2(c)(i) and 2(d)(i) above, nothing in this chapter shall apply to telematics services or any other remote or information service, diagnostic or otherwise, delivered to or derived from the vehicle by mobile communications; provided, however, that nothing in this chapter shall be construed to abrogate a telematics services or other contract that exists between a manufacturer or service provider, a motor vehicle owner, and/or a dealer. For purposes of this chapter, telematics services include but are not limited to automatic airbag deployment and crash notification, remote diagnostics, navigation, stolen vehicle location, remote door unlock, transmitting emergency and vehicle location information to public safety answering points as well as any other service integrating vehicle location technology and wireless communications. Nothing in this chapter shall require a manufacturer or a dealer to disclose to any person the identity of existing customers or customer lists.

Section (3) Nothing in this chapter shall be construed to require a manufacturer to divulge a trade secret.

Section (4) Notwithstanding any general or special law or any rule or regulation to the contrary, no provision in this chapter shall be read, interpreted or construed to abrogate, interfere with, contradict or alter the terms of any provision of chapter 93B or the terms of any franchise agreement executed and in force between a dealer and a manufacturer including, but not limited to, the performance or provision of warranty or recall repair work by a dealer on behalf of a manufacturer pursuant to such franchise agreement; provided, however, that any provision in such a franchise agreement that purports to waive, avoid, restrict or limit a manufacturer's compliance with this chapter shall be void and unenforceable.

Section (5) Nothing in this chapter shall be construed to require manufacturers or dealers to provide an owner or independent repair facility access to non-diagnostic and repair information provided by a manufacturer to a dealer, or by a dealer to a manufacturer pursuant to the terms of a franchise agreement.

Section (6)(a) In addition to any other remedies that may be available under law, a violation of this chapter shall be deemed to be an unfair method of competition and an unfair or deceptive act or practice in the conduct of trade or commerce in violation of section 2 of chapter 93A.

Section (6)(b) An independent repair facility or owner who believes that a manufacturer has failed to provide information or a tool required by this chapter must notify the manufacturer in writing through the National Automotive Service Task Force (NASTF) Service Information Request process or its successor organization or process, and give the manufacturer thirty (30)

days from the time the manufacturer receives the complaint to cure the failure. If the manufacturer cures said complaint within the cure period, damages shall be limited to actual damages in any subsequent 93A litigation.

Section (6)(c) If the manufacturer fails to respond to the notice provided pursuant to (6)(b), or if an independent repair facility or owner is not satisfied with the manufacturer's cure, the independent repair facility or owner may file a complaint in the superior court, or if applicable in the federal district court for the district of Massachusetts. Such complaint shall include, but not be limited to the following:

(i) written information confirming that the complainant has visited the relevant manufacturer website and attempted to effect a proper repair utilizing information provided on such website, including communication with customer assistance via the manufacturer's toll-free call-in assistance, if made available by such manufacturer;
(ii) written information confirming that the complainant has obtained and utilized the relevant manufacturer's scan or diagnostic tool necessary for such repair; and
(iii) evidence of manufacturer notification as set out in (6)(b).

Section (6)(d) Except in the instance of a dispute arising between a franchisor manufacturer and its franchisee dealer related to either party's compliance with an existing franchise agreement, which is required to be resolved pursuant to chapter 93B, a dealer shall have all the rights and remedies provided in this chapter, including, but not limited to, in the instance when exercising rights and remedies as allowed as an independent repair facility under chapter 93B.

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MODEL FIDUCIARY ACCESS TO DIGITAL ASSETS ACT

Summary: *How to reconcile requests by fiduciaries and executors for access to the digital assets like electronic mail of the deceased, with nondisclosure duties under federal privacy law, has raised serious conflict of law and preemption questions for the states. Specifically, how should state law balance the interests of administering to the needs of an estate, with the privacy of electronic mail users and third party information contained in an email communication, while at the same time honoring the duties imposed on online service providers under the federal Electronic Communications Privacy Act (ECPA) to not disclose such content except under specific circumstances This model act clarifies the procedures for the estate of a deceased person to gain access to or obtain copies of the contents of the electronic mail account of that person. The act provides that access to or copies of the contents of the deceased's electronic mail account is authorized upon a written request to the electronic mail provider by the estate and an order by the court of probate for the state that is issued in accordance with the procedures of the federal ECPA and indemnifies the electronic mail provider from liability in compliance with the court's order.*

Section 1. {Title} This Act may be cited as the "Fiduciary Access to Digital Assets Act."

Section 2. {General Rule}

Access to decedents' electronic mail. – An electronic mail service provider shall provide, to the executor or administrator of the estate of a deceased person who was domiciled in this state at the time of his or her death, access to or copies of the contents of the electronic mail account of such deceased person upon receipt by the electronic mail service provider of:

(1) A written request for such access or copies made by such executor or administrator, accompanied by a copy of the death certificate and a certified copy of the certificate of appointment as executor and administrator; and

(2) An order of the court of probate that by law has jurisdiction of the estate of such deceased person, designating such executor or administrator as an agent for the subscriber, as defined in the Electronic Communications Privacy Act, 18 U.S.C. § 2701, on behalf of his/her estate, and ordering that the estate shall first indemnify the electronic mail service provider from all liability in complying with such order.

Section 3. {Severability Clause}

Section 4. {Repealer Clause}

Section 5. {Effective Clause}

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STATEMENT OF PRINCIPLES FOR ELECTRONIC COMMUNICATIONS PRIVACY ACT REFORM

WHEREAS, it is the mission of the American Legislative Exchange Council (ALEC) to advance the principles of free markets, limited government, and federalism, and;

WHEREAS, it is the mission of ALEC's Task Force for Communications and Technology to advance these principles in order to promote economic growth, freedom of technology, and innovation through public policy, and;

WHEREAS, the federal Electronic Communications Privacy Act (ECPA) is the primary federal law that specifies standards for law enforcement access to electronic communications and associated data, affording important privacy protections to subscribers of emerging wireless and Internet technologies, and;

WHEREAS, the statute has not undergone a significant revision since it was enacted in 1986, and;

WHEREAS, technology has advanced dramatically since 1986, and ECPA has been outpaced, and;

WHEREAS, ECPA is now a patchwork of confusing standards that have been interpreted inconsistently by the courts, creating uncertainty for both service providers and law enforcement agencies, and;

WHEREAS, ECPA can no longer be applied in a clear and consistent way, and, consequently, the vast amount of personal information generated by today's digital communication services may no longer be adequately protected, and;

WHEREAS, ECPA must be flexible enough to allow law enforcement agencies and services providers to work effectively together to combat increasingly sophisticated criminals, and;
WHEREAS, ALEC is a member of Digital Due Process, a diverse coalition of privacy advocates, major companies and think tanks, working together, and;

THEREFORE, LET IT BE RESOLVED, that ALEC supports the Digital Due Process goal of simplifying, clarifying, and unifying the ECPA standards, providing stronger privacy protections for communications and associated data in response to changes in technology and new services and usage patterns, while preserving the legal tools necessary for government agencies to enforce the laws, respond to emergency circumstances and protect the public, and;

LET IT BE FURTHER RESOLVED, that ALEC supports the following guiding principles developed by Digital Due Process in regards to reforming ECPA:

- A governmental entity may require an entity covered by ECPA (a provider of wire or electronic communication service or a provider of remote computing service) to disclose communications that are not readily accessible to the public only with a search warrant issued based on a showing of probable cause, regardless of the age of the communications, the means or status of their storage or the provider's access to or use of the communications in its normal business operations.

- A governmental entity may access, or may require a covered entity to provide, prospectively or retrospectively, location information regarding a mobile communications device only with a warrant issued based on a showing of probable cause.

- A governmental entity may access, or may require a covered entity to provide, prospectively or in real time, dialed number information, email to and from information or other data currently covered by the authority for pen registers and trap and trace devices only after judicial review and a court finding that the governmental entity has made a showing at least as strong as the showing under 18 U.S.C. 2703(d).

- Where the Stored Communications Act authorizes a subpoena to acquire information, a governmental entity may use such subpoenas only for information related to a specified account(s) or individual(s). All non-particularized requests must be subject to judicial approval.

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RESOLUTION TO SUPPORT THE WORK OF THE TELEHEALTH WORKING GROUP ON INTERSTATE COMPACT

WHEREAS, the cost of health care has grown an average of 2.4 percent faster than GDP since 1970 and currently represents 18 percent of the United States' total GDP; and

WHEREAS, the lack of access to health care in rural areas is contributing significantly to these increasing costs; and

WHEREAS, 21 percent of the American population lives in rural areas, but only 11 percent of medical specialists practice in those areas, which frequently results in patients in these areas being dramatically undeserved; and

WHEREAS, an integrated National medical response capability is essential to assist across state borders to deal with the medical impacts of major disasters; and

WHEREAS, technology has the potential to improve telehealth, which in turn may significantly improve access to health care in rural areas and in turn reduce costs for patients, states, and the federal government; and

WHEREAS; currently, health care providers are required to obtain multiple state licenses and adhere to multiple state rules in order to provide telemedicine services across state lines.

WHEREAS; such requirements put barriers between patients and high-quality care delivered across state lines.

WHEREAS; current state medical licensing laws do not reflect new innovations and growing technologies.

WHEREAS; patients are restricted from receiving remote medical services by physicians not licensed in their own state, even if that same physician is licensed, credentialed, privileged and providing high quality health care in other states.

WHEREAS; this is not a new concept, the federal government allows doctors at the Department of Defense to work across different states using only one state license, among other important changes.

WHEREAS; the Department of Veterans Affairs (VA) requires a doctor to have just one active, unrestricted state license to practice in any VA facility nationwide.

WHEREAS; such reforms have been incredibly successful in helping lower the cost of healthcare, with a 53 percent reduction in bed days or hospitalizations for those using a home

telehealth program. VA's home telehealth program has an annual cost per patient of $1,600, a far cry from the $13,000 required for direct home care, or the staggering $77,000 yearly fee for nursing home care.

WHEREAS, similar technologies have been effectively used in industries such as finance, transportation, and public safety to reduce costs and provide a more efficient product for consumers; and

WHEREAS, in order to take advantage of improvements in technology to better utilize telehealth and in turn improve access to health care in rural areas, reform is needed in medical licensure regulations and payment models; and

WHEREAS, one such means to promote these necessary reforms may be the use of an interstate compact; and

WHEREAS, similar medical licensing compacts already exist, including the Nurse Licensure Compact; and

WHEREAS, interstate compacts are unique tools reserved for states that encourage multistate cooperation and innovative policy solutions while asserting and preserving state sovereignty.

NOW THEREFORE BE IT RESOLVED THAT, The American Legislative Exchange Council supports the work of the Federation of State Medical Boards and the Telehealth Care Interstate Compact Working Group and urges it to continue working to explore the creation of a new interstate compact agreement designed to improve access to health care in rural areas by facilitating the interstate licensing of doctors and reforming the existing reimbursement system.

Mission Statement

To advance free markets, limited government, and federalism.